IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) C.W.P.No.16396 of 2005

Arvind Julka and others v. The State of Punjab and others

(2) C.W.P.No.7469 of 2006

Kisan Agro Foods (Pvt.) Ltd. and others v. State of Punjab and another

(3) C.W.P.No.9689 of 2006

M/s Aggarwal Roller Flour Mills v. The State of Punjab and others

(4) C.W.P.No.17688 of 2005

Shree Ganesh Roller Flour Mills and others v. The State of Punjab and others

(5) C.W.P.No.11905 of 2006

Shiva Roller Flour & Rice Mill v. The State of Punjab and others

(6) C.W.P.No.12093 of 2006

Julka Solvex Ltd. v. The State of Punjab and others

(7) C.W.P.No.8921 of 2006

Dirba Agro Mills Private Limited and others v. State of Punjab

(8) C.W.P.No.8498 of 2006

Shiv Shankar Foods Private Limited v. State of Punjab and others

(9) C.W.P.No.7427 of 2006

Siya Food Products, Karyam v. The State of Punjab and others

Present: S/Shri R.S.Virk, Sandeep Goyal and Vivek Sharma,
Advocates for the petitioners.
Shri Amol Rattan, Additional Advocate General, Punjab.

CORAM: Hon'ble Mr. Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, **J.**

This is a bunch of nine writ petitions, involving common questions

of facts and law, therefore, the same are being disposed of by a common order. However, for the sake of reference, the facts are taken from C.W.P.No.16396 of 2005.

This petition has been filed by three petitioners, who are engaged in the business of flour mills, having five or more roll bodies installed in their flour mills. The case of the petitioners is that keeping in view the pathetic financial condition of the flour mills in the State of Punjab, vide notification dated 12.11.2001, an amendment was carried out in Schedule `B' appended to the Punjab General Sales Tax Act, 1948 (for short, `the 1948 Act'), whereby new entry No.18 (a) was inserted which exempted purchase of wheat for processing by the roller flour mills with five or more installed roller bodies from payment of tax. The relevant entry is extracted below:

> "18(a) Wheat when purchased for processing by the Roller Flour Mills with five or more installed Roller bodies."

It is further pleaded that in the neighbouring States, i.e, Himachal Pradesh and Jammu & Kashmir, the flour mills are enjoying exemption from payment of purchase tax on wheat and even in the State of Punjab, while exempting flour mills from payment of purchase tax on wheat, the flour mills were granted exemption from payment of market fee and Rural Development Fund.

The 1948 Act was replaced by the Punjab Value Added Tax Act, 2005 (for short, `the VAT Act') w.e.f. 1.4.2005. The exemption from payment of purchase tax granted to the flour mills having five or more installed roller bodies under the 1948 Act was not continued under the VAT Act. Accordingly, the Assessing Authority issued notice to the petitioners for their having not deposited the purchase tax while filing the return. The petitioners filed reply to the show cause notice, which was not found to be satisfactory by the Assessing Authority.

The only contention of the petitioners is that in terms of Section 92 (3)(a) of the VAT Act, all the tax concessions granted to the industrial units under the 1948 Act shall remain in force, subject to the exceptions, restrictions and

conditions, as may be notified by the State Government from time to time and no notification having been issued, exemption from payment of purchase tax granted to the petitioners in terms of entry 18(a), as added vide amendment dated 12.11.2001, was still in force and any action to the contrary by the authority was liable to be struck down.

In the reply filed, the respondents have defended the action by pleading that the petitioners have tried to mislead this court by trying to project that they were granted exemption, which is akin to the concessions granted under Sections 10A, 10B or 30A of the 1948 Act, which stood repealed on 31.3.2005. Notification dated 12.11.2001 was issued in exercise of powers conferred under Section 6 of the 1948 Act, thereby inserting a new Entry 18(a) in Schedule `B' appended to the 1948 Act containing the list of tax free goods. The saving clause, as contained in Section 92(3)(a) of the VAT Act, does not, in any way, come to the rescue of the petitioners, as the petitioners had not been granted any benefit under the provisions of Sections 10A, 10B or 30A of the 1948 Act.

A reference to the following provisions of the 1948 Act and the VAT Act would be relevant for proper appreciation of the controversy in issue:

Sections 6, 10A, 10B and 30A of the 1948 Act

Section 6

Tax Free Goods

"6. No tax shall be payable on the sale of goods specified in Schedule `B' subject to the conditions specified therein:

Provided that the State Government after giving by notification, not less than ten days, notice of its intention so to do may by like notification, add to or delete from this Schedule, and thereupon the Schedule shall be deemed to have been amended accordingly:

Provided further that if the State Government is satisfied that circumstances exist, which render it necessary to take immediate action, it may dispense with the condition of previous publication.

Section 10-A

Deferment of Tax

Notwithstanding anything to the contrary contained in this

Act, the State Government, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State may defer the payment of tax due against such class of industries, for such period, either prospectively or retrospectively and subject to such conditions, as may be prescribed. (Relevant Rule: Deferment and Exemption Rule 1991)

Section 10-B

Deemed Payment of Tax

Notwithstanding anything contained in this Act, the State Government or the Commissioner or any person appointed to assist him under sub-section (1) of Section 3, not below the rank of an Assistant Excise and Taxation Commissioner, may pass order, with regard to a unit, which came into production for the first time on or after the first day of April, 1989 or wherein modernisation, expansion or diversification has been carried out and to whom incentive by way of deferment of tax, under the Industrial Policy, 1989 of the State Government, have been granted by virtue of deferment certificate, and where a loan liability equal to the amount by any such tax as aforesaid payable by such unit, has been raised by the appropriate authority of the department of Industries of the Government of Punjab, that the tax payable by such unit shall in public interest, be deemed, to have been paid.

Note:- The expressions and terms, used in this section, but not defined in the Act, shall have the same meaning as have been assigned to them under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, as amended from time to time. (See Deferment and Exemption Rules, 1991).

Section 30-A

Power to exempt certain class of industries

The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions, as may be prescribed;

Provided that in the case of industries which came into production for the first time on or after the first day of April, 1989, or wherein modernisation, expansion or diversification has been carried out in accordance with the Industrial Policy, 1989, the Government may exempt such industries from the payment of tax

with effect from the Ist day of April, 1989, subject to such conditions as may be prescribed.

Provided further that in the case of industries which came into production for the first time after the 24th day of June, 1991, or wherein expansion, modernisation or diversification has been carried out in accordance with the Electronics Policy, 1991, the Government may exempt such industries from the payment of tax with effect from the 24th day of June, 1991, subject to such conditions, as may be prescribed.

Explanation: for the purpose of this section;

(i) The industrial policy, 1989 shall mean the Industrial Policy of 1989, notified by the Government of Punjab in the Department of Industries as amended from time to time.

(ii) The Electronics Policy, 1991 shall mean the Electronics Policy of 1991 notified by the Government of Punjab in the Department of Industries as amended from time to time."

Section 92 (1)and (3)(a) of the VAT Act

92.(1) With effect from the date of coming into force of this Act, the Punjab General Sales Tax Act, 1948 (Punjab Act 46 of 1948), shall stand repealed.

xx xx xx

(3)Notwithstanding such repeal,-

(a) the provisions of Sections 10A, 10B and 30A of the repealed Act and the rules framed thereunder relating to tax concessions to industrial units and assessment thereof, shall remain in force subject to the exceptions, restrictions and conditions, as may be notified by the State Government from time to time."

We have heard learned counsel for the petitioners in the various writ petitions and the learned Additional Advocate General for the State of Punjab.

The contention raised on behalf of the petitioners, though appears to be attractive in the first blush, but the same deserves to be rejected when analysed in terms of the provisions of the 1948 Act as well as the VAT Act. The contention raised on behalf of the petitioners that tax concessions granted to the industrial units before repeal of the 1948 Act could not be done away with without there

being a notification issued by the Government. There being no notification issued, the concession of exemption from purchase tax granted to the flour mills having five or more installed roller bodies continues even after enactment of the VAT Act and repeal of the 1948 Act, Schedule `B' was part of which, the purchase of wheat by the petitioners should still be treated as exempted from levy of tax. While making the submission, learned counsel has totally misread the provisions of Section 92(3)(a) of the VAT Act which clearly provides that notwithstanding the repeal of the 1948 Act, the provisions of Sections 10A, 10B and 30A of the 1948 Act and the rules framed thereunder relating to tax concessions shall remain in force, subject to exceptions, restrictions etc., as may be notified.

Now the question arises as to whether the concession granted to the petitioners was under any of the provisions of Sections 10A, 10B or 30A of the 1948 Act, which have been saved under the VAT Act? A perusal of the notification dated 12.11.2001, which is relied upon by the petitioners to plead that the concession granted to them should be deemed to be continued even after the repeal of the 1948 Act and replacement thereof by the VAT Act, shows that the same was an amendment carried out in Schedule `B', appended to the 1948 Act, in exercise of powers conferred by Section 6 of the 1948 Act. It did not have any relation whatsoever with the concessions given under the provisions of Sections 10A, 10B or 30A of the 1948 Act. In view of our above discussions, the claim made by the petitioners is totally misconceived and the same deserves to be rejected.

Accordingly, the writ petitions are dismissed.

(Rajesh Bindal)
Judge

(Adarsh Kumar Goel)
Judge

7th September, 2006
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